

REMARKS

Claims 1, 2, 4 – 14, and 16 – 17 are now pending in the application. By this paper, Claims 1, 2, 6, 11, and 17 have been amended, and Claim 15 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Support for the amendments can be found throughout the specification and no new matter has been added. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

DOUBLE PATENTING

Claims 1 – 2 and 4 – 17 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1 – 18 of copending Application No. 10/738,345 in view of Rashid (U.S. Patent 6,253,588) and Seeliger (U.S. Pat. No. 6,090,232). The Examiner is respectfully requested to hold this provisional rejection in abeyance until such time the Application is in condition for allowance, at which time Applicant intends to file a terminal disclaimer.

REJECTION UNDER 35 U.S.C. § 103

Claims 1 – 2 and 4 – 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Seeliger (U.S. Pat. No. 6,090,232) in view of Baumeister (U.S. Pat. No. 5,151,246) and in further view of Rashid (U.S. Pat. No. 6,253,588). This rejection is respectfully traversed.

Independent Claim 1 recites “A composite structure subassembly comprising... a metal foam precursor comprising a mixture of metal powder and a blowing agent

disposed on said curvilinear sheet metal, said precursor being applied prior to said one of superplastic or quick plastic deforming.” Claims 6, 11, and 17 recite a similar limitation. As such, the invention as presently claimed calls for a sheet metal portion which is quick plastic or superplastically deformed after a metal foam precursor is applied to the sheet metal. The deformation and foaming operations are thus carried out in one seamless step, as the pre-heating of the sheetmetal prior to the forming operation continues after the forming operation and initiates the foaming operation.

It is respectfully submitted that the Seeliger and Baumeister references would not have been combined with the Rashid reference by one of ordinary skill in the art at the time the invention was made. As the Examiner states, “[o]bviousness does not require absolute predictability of success; instead, all that is required is there be a reasonable expectation of success. *In re O’Farrell*, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988) (emphasis supplied).” However, it is respectfully submitted that the Examiner has not demonstrated a prima facie case for obviousness, and has instead applied an improper “obvious to try” standard. In regard to the expectation of success which is required for the prima facie case for obviousness, the Examiner states that “...the potential advantages of Rashid’s process would clearly outweigh reservations.” This conflicts with the requirement of a “reasonable expectation of success” because the fact that a combination may potentially be desirable or beneficial does not overcome reservations in the art as to whether the references can be combined. Neither reference discloses any reason that there would be a reasonable expectation of success in combining the references and, as such, the references cannot be combined. The Examiner has noted

the existence of reservations as to whether the references can be combined, but has not shown where the prior art discloses how to overcome these reservations.

Further, there is no motivation to combine the references as the Examiner has done. One of ordinary skill in the art at the time the invention was made would not have combined the devices of Rashid and Seeliger because foam metal precursors were not thought able to be combined with sheetmetal which was then formed using a quick plastic or superplastic forming process. As such, it is respectfully submitted that one of ordinary skill in the art at the time the invention was made would not combine the Rashid and Seeliger references.

It is therefore believed that Claims 1, 6, 11, and 17 are in condition for allowance. Additionally, Claims 2, 4, 5, 7 – 10, 12 – 14, and 16 depend from one of the independent claims and, as such, are also believed to be in condition for allowance. Reconsideration and withdrawal of the present rejection is therefore respectfully requested.


CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the

Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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